IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.371 OF 2006

Hitesh Pravinchandra Shah ..Petitioner

Vs.

The State of Maharashtra ..Respondent

Mr.Rajendra Sorankar i/b Shri S.B.Shetye for the applicant

Mr.D.S.Mhaispurkar, A.P.P. for the state

CORAM : J.N.PATEL &
SMT.ROSHAN S.DALVI, JJ.

DATED : 8TH SEPTEMBER, 2006

P.C.:

1. Heard.

2. Rule. Returnable forthwith.

3. Ld.A.P.P. waives service and submits that filing of return may be dispensed with as the respondents is prepared to assist the court with the help of record and proceedings.

4. The petitioner has sent a writ petition by

hand through Superintendent of Jail to this court which has been treated as Criminal Writ Petition. It is the case of the petitioner that the petitioner was tried by the Court of Sessions at Mumbai in Sessions case no.1015 of 1989 for having committed offences under section 302, 394 and 392 Indian Penal Code by judgment and order dt.29.6.92. The Trial court has found him guilty and sentenced him in the following manner:

a) In respect of offence punishable under section 302 of the Indian Penal Code, sentenced to suffer imprisonment of life and to pay a fine of Rs.10,000/- i/d of fine to suffer one year R.I.

b) In respect of offence punishable under section 394 of the Indian Penal Code, sentenced to life imprisonment and to pay a fine of Rs.10,000/- i/d of fine to undergo one year R.I.

c) and for the offence punishable under section 392 of the Indian Penal Code, sentenced to ten years imprisonment and to pay a fine of Rs.10,000/- i/d of fine to suffer further R.I. for one year.

5. It is the case of the petitioner that in Writ Petition No.1257 of 2003 which was filed by this petitioner for seeking an order that all the substantive sentences to be made to run concurrently, this court granted the said relief by passing an order on 17.10.00.

6. The grievance of the petitioner is that the respondent state has wrongfully categorised him as Professional Criminal and therefore according to the Guidelines for premature release under the "14 Year Rule" of Prisoners serving life sentence after 18th December, 1978, he has been required to complete 26 years of Imprisonment including remissions. The petitioner was given a period which he has already undergone including his various categories of remissions and parole. It is his case that this decision on the part of the Home Department i.e. order No.RLP-1103/1541/503/PRS-3 dt.14.09.05 deserves to be quashed and set aside and that the petitioner should be released as he has already completed 23 years and at the most he should be categorised under category 1(a).

7. The learned counsel for the petitioner submits that except for the said case, the petitioner has no criminal antecedents to his credit and therefore, his categorisation under category 5(b) of the said guidelines is unjustified.

8. It is not in dispute that the petitioner has been convicted for having committed offences under section 302, 394 and 392 of the Indian Penal Code i.e. robbery and murder and therefore, he has been rightly categorised under category 5(a) of the Guidelines which is applicable. We therefore, do not find any merits and in the challenge to the impugned order. Petition is therefore, dismissed. Rule is discharged.

(SHRI J.N. PATEL, J)

(SMT.ROSHAN DALVI, J)